

Tuesday, August 13, 2013

The Board met at its offices 450 N Street, Sacramento, at 10:35 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Tonja M. Jarrell, 571357
2005, \$682.16 Assessment
2006, \$5,486.73 Assessment
For Appellant:

Tonja M. Jarrell, Taxpayer
Jaimi Nakata, Representative
Marguerite Mosnier, Tax Counsel
Diane Ewing, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has demonstrated error in respondent's determination to deny her innocent spouse relief.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 11:40 a.m. and reconvened at 1:08 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Prudent Staffing Services, 602283
2010, \$722.98 Claim for Refund
For Appellant:

Eno (Nancy) Oduok, Representative
Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether the late payment penalty imposed under Revenue and Taxation Code (R&TC) section 19132 should be abated.
Whether the penalty for the underpayment of the estimated tax should be abated.
Whether appellant is entitled to interest abatement.
Whether respondent must compensate appellant for the \$300.00 in bank fees which appellant incurred as a result of respondent's collection activity.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Michael O. Gualco and Rex-Ann S. Gualco, 640336
2008, \$8,587.00 Claim for Refund
2009, \$10,829.00 Claim for Refund
For Appellants:

Michael O. Gualco, Taxpayer
Rex-Ann Gualco, Taxpayer
Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

For Franchise Tax Board:

Tuesday, August 13, 2013

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown reasonable cause for an abatement of the late filing penalties.

Whether appellants have shown reasonable cause for an abatement of the notice and demand (demand) penalties.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 2:11 p.m. and reconvened at 2:18 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Ivon Pitti, 688101

2008, \$835.00 Assessment

For Appellant:

Ivon Pitti, Taxpayer

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the proposed assessment.

Whether interest may be abated.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

PUBLIC HEARING

Proposed Adoption of Sales and Use Tax Regulation 1566.1, *Auto Auctions and Auto Dismantlers*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of a new regulation to implement, interpret, and make specific the presumption established by Revenue and Taxation Code section 6092.5 ([Exhibit 8.1](#)).

Speakers were invited to address the Board, but there were none.

Action: The Board deferred consideration of this matter to later in the day.

Exhibits to these minutes are incorporated by reference.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, August 13, 2013

Interior Design Specialists, Inc., 553909 (EH)

1-1-07 to 12-31-09, \$133,485.47 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Ker, Inc., 467118 (FH)

1-1-05 to 12-31-07, \$72,718.20 Tax, \$7,271.84 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Amritpal Kaur Lehra, 532084, 533074 (DF)

4-1-06 to 3-31-09, \$55,211.56 Tax, \$5,521.19 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Robert W. McDonald and Margaret McDonald, 349576 (UT)

3-23-03, \$12,499.08 Tax

Action: Redetermine as recommended by the Appeals Division.

Streamline Foam, Inc., 511658 (UT)

9-24-07, \$37,326.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Silverline Trailer Sales, LLC, 558999 (KH)

4-1-07 to 3-31-10, \$1,225.56 Tax

Action: Redetermine as recommended by the Appeals Division.

East Coast Foods, Inc., 444779 (AS)

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty-Double Negligence Penalty, \$52,564.30 Amnesty Interest Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Jose E. Sanchez, 489568, 505671 (EA)

10-1-05 to 9-30-08, \$59,616.77 Tax, \$0.00 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Union Outlet, Inc., 547468 (AS)

1-1-06 to 12-31-08, \$118,123.10 Tax, \$11,812.32 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, August 13, 2013

Benjamin F. Killen, 606504

2009, \$2,207.00 Tax, \$551.75 Late Filing Penalty, \$551.75 Notice and Demand Penalty, \$100.00 Filing Enforcement Fee

James V. Robertson, 608631

2009, \$11,802.00 Tax, \$2,950.50 Late Filing Penalty, \$2,950.50 Notice and Demand Penalty, \$100.00 Filing Enforcement Fee

Champion Wiseman, 608439

2009, \$1,455.00 Tax, \$363.75 Late Filing Penalty, \$367.25 Notice and Demand Penalty, \$100.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose frivolous appeal penalties in the following amounts: \$5,000.00 to *Benjamin F. Killen, 606504*; \$5,000.00 to *James V. Robertson, 608631*; and, \$2,500.00 to *Champion Wiseman, 608439*.

Ty D. Kirkpatrick and Pauline P. Kirkpatrick, 626170

2008, \$2,123.21 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas J. Meriwether and Caryn B. Meriwether, 636512

2008, \$971.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Thomas Bledsoe and Lori Bledsoe, 601105

2004, \$1,031.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Celestine Coleman, 601333

2006, \$1,220.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Bruce A. Conklin, 601395

2007, \$1,955.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Charles Cullen and Philomena Cullen, 593634

2007, \$738.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elias Gallegos III, 575218, 575222

2006, \$233.00 Tax, \$58.25 Late Filing Penalty

2008, \$521.00 Tax, \$130.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Joseph R. Gerardo, 576173

2007, \$5,523.00 Tax, \$1,380.75 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions and impose a \$750.00 frivolous appeal penalty.

Tuesday, August 13, 2013

Michael Minor, 595878

2008, \$460.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Nareshbhai Patel and Vasantinben Patel, 599548

2007, \$19,904.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Juan Ramirez, 575000

2008, \$898.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Pamela A. Ricci, 588394

2007, \$989.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Virgilo Romero and Hortencia Romero, 611878

2005, \$2,764.00 Tax, \$552.80 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Bradley Silcox, 608450

2008, \$2,346.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Sunshine Auto Parks and Building Services, 597349

2005, \$6,234.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Israel Ury and Betty Ury, 586421

2000, \$159,822.00 Claim for Refund

2001, \$58,769.00 Tax

2002, \$15,799.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Antonio Gallo, 595225

2001, \$3,430.00 Tax

Action: Deny the petition for rehearing.

Steven Olmos, 600499

2005, \$8,613.00 Tax, \$2,153.25 Late Filing Penalty, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Richard B. Pallack, 527752

1993, \$47,373.00 Tax

Action: Deny the petition for rehearing.

Tuesday, August 13, 2013

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND AND GRANT-ONE DAY INTEREST RELIEF, CONSENT

The Board deferred consideration of the following matter: *Rohr, Inc., 569314 (OH)*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Chula Vista Electric Co., 529708 (FH)

1-1-05 to 3-31-08, \$168,864.25

Action: Approve the redetermination as recommended by staff.

Banctec Third Party Maint, Inc., 595632 (OH)

7-1-03 to 12-31-06, \$2,426,077.35

Action: Approve the redetermination as recommended by staff.

Ricoh USA, Inc., 343235 (OH)

7-1-97 to 9-30-01, \$1,050,755.23

Action: Approve the redetermination as recommended by staff.

The Wella Corporation, 554875 (AC)

4-1-03 to 12-31-07, \$100,238.55

Action: Approve the redetermination as recommended by staff.

Siemens Transportation, 625728 (OH)

1-1-06 to 9-30-09, \$698,835.30

Action: Approve the redetermination as recommended by staff.

Portola Valley Shell, 523629 (BH)

1-1-06 to 12-31-08, \$112,735.42

Action: Approve the redetermination as recommended by staff.

Gamestop, Inc., 732966 (OH)

7-1-12 to 9-30-12, \$391,070.10

Action: Approve the relief of penalty as recommended by staff.

Lutron Electronics Co., Inc., 733591 (OH)

7-1-03 to 6-30-11, \$115,428.99

Action: Approve the relief of penalty as recommended by staff.

Rohr, Inc., 569314 (OH)

1-1-08 to 9-30-10, \$140,141.00

Action: The Board took no action.

Tuesday, August 13, 2013

Novell, Inc., 474064 (OH)

1-1-06 to 12-31-08, \$318,766.99

Action: Approve the denial of claim for refund as recommended by staff.

Port Plastics, Inc., 733901 (EH)

11-1-02 to 11-30-12, \$54.15 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

McKenna Motors Huntington Beach, Inc., 733913 (EA)

10-1-12 to 12-31-12, \$545.01 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Golden West Restaurants, Inc., 733918 (EA)

10-1-12 to 10-31-12, \$638.30 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Foothill Mill & Lumber Co., Inc., 733915 (KH)

7-1-12 to 9-30-12, \$13.69 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Northwestern Industries, Inc., 733907 (OH)

10-1-12 to 10-31-12, \$186.73 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Café Stella, Inc., 733904 (AS)

1-1-13 to 1-31-13, \$99.17 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Tacaza, Inc., 733920 (DF)

10-1-12 to 10-31-12, \$580.27 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Trattoria Amici/Americana, LLC, 733910 (AP)

1-1-13 to 1-31-13, \$121.34 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Brentwood Feed & Pet Supply, Inc., 733911 (CH)

10-1-12 to 12-31-12, \$17.72 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, August 13, 2013

The Leather Factory, Inc., 733582 (AA)

10-12-05 to 12-31-05, \$493,255.59

Action: Approve the credit and cancellation as recommended by staff.

R. Ring Enterprises, Inc., 734200 (CH)

7-1-09 to 12-31-09, \$381,705.00

Action: Approve the credit and cancellation as recommended by staff.

Robert A. Brutyn, 728743 (JH)

7-1-08 to 9-30-08, \$241,416.53

Action: Approve the credit and cancellation as recommended by staff.

Intuitive Surgical, Inc., 735427 (GH)

10-1-12 to 12-31-12, \$148,024.00

Action: Approve the credit and cancellation as recommended by staff.

Edward James Graves, 731902 (EH)

4-2-08 to 12-31-08, \$269,015.32

Action: Approve the credit and cancellation as recommended by staff.

County of San Bernardino Attn. Aud., 730369 (EH)

10-1-07 to 12-31-10, \$447,116.65

Action: Approve the refund as recommended by staff.

Novellus Systems, Inc., 721479 (GH)

4-1-11 to 12-31-12, \$289,619.07

Action: Approve the refund as recommended by staff.

Gelco Corporation, 727959 (OH)

1-1-08 to 12-31-10, \$1,466,050.34

Action: Approve the refund as recommended by staff.

Valero Refining Co.-CA, 714317 (OH)

7-1-07 to 3-31-10, \$746,709.45

Action: Approve the refund as recommended by staff.

Edwards Theatres, Inc., 729195 (OH)

4-1-08 to 9-30-11, \$302,876.33

Action: Approve the refund as recommended by staff.

Trader Joe's Company, 609726 (AP)

1-1-09 to 12-31-11, \$176,141.33

Action: Approve the refund as recommended by staff.

Conceptus, Inc., 732881 (GH)

1-1-05 to 9-30-08, \$501,854.73

Action: Approve the refund as recommended by staff.

Tuesday, August 13, 2013

Conceptus, Inc., 577459 (GH)

10-1-08 to 12-31-11, \$1,209,103.01

Action: Approve the refund as recommended by staff.

Regal Cinemas, Inc., 728348 (OH)

10-1-08 to 9-30-11, \$125,543.29

Action: Approve the refund as recommended by staff.

Boeing Satellite Systems, Inc., 725151 (AS)

4-1-07 to 12-31-10, \$401,592.96

Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 705981 (FH)

4-1-12 to 12-31-12, \$124,255.00

Action: Approve the refund as recommended by staff.

Villa Amorosa, 575260 (JH)

4-1-10 to 9-30-11, \$102,969.61

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 714053 (EA)

10-1-12 to 12-31-12, \$124,630.00

Action: Approve the refund as recommended by staff.

Cook Medical Incorporated, 576304 (OH)

7-1-07 to 6-30-11, \$261,917.30

Action: Approve the refund as recommended by staff.

Citigroup, Inc., & Subsidiaries & Affiliates, 603362 (OH)

1-1-11 to 6-30-12, \$2,639,488.11

Action: Approve the refund as recommended by staff.

Payless Shoesource Distribution, 578281 (OH)

4-1-08 to 12-31-10, \$273,434.80

Action: Approve the refund as recommended by staff.

Wistron Infocomm Technology America Corporation, 675514 (OH)

1-1-12 to 3-31-12, \$145,558.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Mercury Insurance Company, 343345; Mercury Casualty Company, 343347; Mercury Casualty Company, 444716; Mercury Insurance Company, 444718*; the Board made the following orders:

Tuesday, August 13, 2013

Mercury Insurance Company, 343345 (STF)

1-1-01 to 12-31-02, \$416,794.00

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mercury Casualty Company, 343347 (STF)

1-1-01 to 12-31-02, \$472,357.00

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mercury Casualty Company, 444716 (STF)

1-1-03 to 12-31-03, \$291,362.00

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mercury Insurance Company, 444718 (STF)

1-1-03 to 12-31-03, \$310,713.00

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Idemitsu Apollo Corporation, 730465 (STF)

7-1-12 to 7-31-12, \$150,712.40

Action: Approve the relief of penalty as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Loh Sun International, Inc., Kent La, Nancy La, and John La, 480987, 480989, 506428 (STF)

1-1-01 to 6-30-03, \$2,049,540.00 Tax, \$512,385.00 Fraud Penalty

7-1-03 to 7-31-03, \$60,117.00 Tax, \$15,029.25 Fraud Penalty

7-1-03 to 7-31-03, \$133,110.00 Tax, \$33,277.50 Fraud Penalty

Considered by the Board: Summary Decision (Rev. & Tax. Code, § 40)

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged.)

Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that its previous motion to adopt the written summary decision as presented by staff be rescinded and expunged.

Upon motion of Ms. Mandel, seconded by Mr. Runner and duly carried, Mr. Horton, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, Ms. Yee not participating, the Board adopted the written summary decision as presented by staff.

Sonja M. Craighton, 558975 (KH)

10-1-07 to 6-30-10, \$46,355.03 Tax, \$4,635.53 Negligence Penalty

Considered by the Board: January 15, 2013

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred the matter to later in the day.

Tuesday, August 13, 2013

Data Physics Corporation, 425711, 473226 (GH)

1-1-04 to 12-31-06, \$0.00 Tax

Considered by the Board: November 16, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Nnadi Linus Udengwu, 515515 (AP)

4-1-05 to 6-30-08, \$168,055.95 Tax, \$16,805.64 Negligence Penalty

Considered by the Board: February 1, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Store2Door, Inc., 352179 (AC)

1-1-03 to 12-31-05, \$77,083.77 Tax, \$7,708.39 Negligence Penalty

Considered by the Board: October 21, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Blowfish SR, LLC, 479540 (GH)

10-1-03 to 12-31-06, \$10,330.92 Tax

Blowfish, LLC, 484932 (BH)

7-1-04 to 6-30-07, \$14,550.18 Tax

Considered by the Board: November 16, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Hardip Singh Sandhu, 533270 (KH)

4-1-06 to 3-31-09, \$56,915.71 Tax, \$8,267.71 Negligence Penalty

Considered by the Board: January 15, 2013

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tuesday, August 13, 2013

Akop Jack Chichyan, Vicken Djeredjian, and Mnatsakan Mike Grigoryan, 388129 (STF) 10-1-00 to 2-28-02, \$2,815,668.00 Tax, \$703,917.00 Fraud Penalty, \$281,566.80 Failure to File Penalty

Speaker: Abe Golomb, Representative

Considered by the Board: November 15, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred the matter to later in the day.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

James S. Gandrup, 605520

2006, \$12,402.00 Tax, \$3,100.50 Late Filing Penalty, \$3,100.50 Notice and Demand Penalty

Carol Grant, 600451

2009, \$1,691.00 Tax, \$422.75 Late Filing Penalty, \$422.75 Notice and Demand Penalty

Eldo M. Klingenberg, Jr., 600453

2009, \$2,675.00 Tax, \$668.75 Late Filing Penalty, \$668.75 Notice and Demand Penalty

Dan Pickell, 600488

2009, \$2,152.00 Tax, \$513.50 Late Filing Penalty, \$513.50 Notice and Demand Penalty

Marianne Pretscher-Johnson, 605527

2006, \$5,295.00 Tax, \$1,323.75 Late Filing Penalty, \$1,323.75 Notice and Demand Penalty

Darrell L. Rich, 608471

2007, \$7,888.00 Tax, \$1,972.00 Late Filing Penalty, \$1,972.00 Notice and Demand Penalty,

2008, \$7,211.00 Tax, \$1,802.75 Late Filing Penalty, \$1,802.75 Notice and Demand Penalty

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed frivolous appeal penalties in the following amounts: \$750.00 to *James S. Gandrup, 605520*; \$5,000.00 to *Carol Grant, 600451*; \$5,000.00 to *Eldo Klingenberg, 600453*; \$5,000.00 to *Dan Pickell, 600488*; \$5,000.00 to *Marianne Pretscher-Johnson, 605527*; and, \$2,500.00 to *Darrell L. Rich, 608471*.

David Du Tran and Thuyen Thi Tran, 547815

2003, \$32,584.00 Assessment, \$8,146.00 Late Filing Penalty

2004, \$78,102.00 Assessment

Considered by the Board: July 24, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board as conceded to abate the late filing penalty for tax year 2003.

Tuesday, August 13, 2013

Scott L. Stringer and Irene Stringer, 609814, 610020

2005, \$306,390.00 Assessment

2005, \$5,253.00 Assessment

Considered by the Board: December 18, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Board Roll Changes

2011 and 2012 State-Assessed Property Rolls

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2011 and 2012 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 8.2](#)).

OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *Sharina Alloush; Mark Alvin Bell; Ronald F. Maciej; and, David Todd Methven*; as recommended by staff.

LOCAL TAX REALLOCATION MATTERS

City of Milpitas, 571838

7-1-08 to 3-31-13, \$350,850.00

Considered by the Board: May 22, 2013

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition for rehearing be denied as recommended by the Appeals Division.

City of Fillmore, 466375

4-1-07 to 12-31-12, \$1,006,188.00 Tax

Considered by the Board: Summary Decision (Rev. & Tax. Code, § 40)

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board agreed to vote separately on the issues identified in written summary decision Alternative B.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted the written summary decision Alternative B as to issue 1.

Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the written summary decision Alternative B as to issue 2.

Tuesday, August 13, 2013

CHIEF COUNSEL MATTERS**RULEMAKING****Second Readoption of Emergency Regulation 2000, *Retailer Reimbursement Retention***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for second readoption of emergency Regulation 2000 to maintain the status quo while the Board considers the adoption of a permanent regulation ([Exhibit 8.3](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board readopted emergency Regulation 2000 as recommended by staff.

Section 100 Changes**Proposed Amendments to Regulation 1642, *Bad Debts***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to make the regulation consistent with amendments to Revenue and Taxation Code sections 6055 and 6203.5 ([Exhibit 8.4](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1642, *Bad Debts*, as recommended by staff.

PUBLIC HEARING**Proposed Adoption of Sales and Use Tax Regulation 1566.1, *Auto Auctions and Auto Dismantlers (Continued)***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of a new regulation to implement, interpret, and make specific the presumption established by Revenue and Taxation Code section 6092.5 ([see Exhibit 8.1](#)).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted Regulation 1566.1, *Auto Auctions and Auto Dismantlers*, as recommended by staff.

Tuesday, August 13, 2013

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Addition of new Compliance Policy and Procedures Manual (CPPM) Chapter 10, Statewide Compliance and Outreach Program (SCOP).*

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 8.5](#)).

MaryAnn Hay, Business Taxes Specialist III, Field Operations Division,
Sales and Use Tax Department
Irma De La Paz Hernandez, Supervising Tax Auditor II, San Jose Office
James R. Hewitt, Business Taxes Compliance Specialist, San Diego Office
Susan K. Janota, Business Taxes Compliance Specialist, Salinas Office
Frank D. Love, Principal Auditor of the Motor Carrier Office, Property and
Special Taxes Department
David L. Mayo, Staff Information Systems Analyst (Specialist), San Diego
Office
Stephen R. Rudd, Chief of Field Operations, Sales and Use Tax Department

Action: Approve the Board Meeting Minutes of December 18-19, 2012 and January 15, 2013.

Action: Approve revision to Audit Manual (AM) Chapter 1, *General Information*, to add proposed AM section 0101.22, *Standard of Proof*, as recommended by staff ([Exhibit 8.6](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 8.7](#)).

Business Taxes Committee

The Board deferred the matter to a later date.

Tuesday, August 13, 2013

ADMINISTRATIVE MATTERS, CONSENT (CONTINUED)

Ms. Steel made complementary remarks regarding Stephen R. Rudd, former Chief, Field Operations, Sales and Use Tax Department, who retired on December 29, 2012, after thirty-six years of outstanding and meritorious service to the State of California and the State Board of Equalization.

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Cynthia Bridges, Executive Director, reported that the Center for Digital Government honored the Board of Equalization, Employment Development Department and Franchise Tax Board with the group award: *2013 Best of California Award for Best IT Collaboration among Organizations*, in recognition of the Financial Institution Record Match (FIRM) Project. The award will be presented at the Annual Government Technology Conference (GTC) on August 21, 2013 in Sacramento.

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, provided an update regarding the Fire Prevention Fee Program.

Mr. Horton introduced Sharon Runner, former California State Senator, former California State Assembly Member, coauthor of *Jessica's Law*, and Sunday School Teacher.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, introduced Edna Murphy, Chief Financial Officer, Financial Management Division, and Jennifer Edmond, Assistant Chief, Human Resources Division.

Edna Murphy, Chief Financial Officer, Financial Management Division, presented a 2013/14 Legislative Budget Change Proposal: *Senate Bill 90 and Assembly Bill 93, Manufacturer's Sales and Use Tax Exemption* ([Exhibit 8.8](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Legislative Budget Change Proposal: *Senate Bill 90 and Assembly Bill 93, Manufacturer's Sales and Use Tax Exemption* as recommended by staff.

Edna Murphy, Chief Financial Officer, Financial Management Division, presented the 2014/15 Budget Change Proposals (BCPs) for the Board's direction and approval for inclusion in the Governor's fiscal year 2014/15 budget ([Exhibit 8.9](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the BCP *Fire Prevention Fee* as recommended by staff ([see Exhibit 8.9](#)).

Tuesday, August 13, 2013

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the BCPs: *Southern California Appeals and Settlement Unit*; *Headquarters Facility Consolidation*; and, *Valuation Factors Studies*; as recommended by staff (see [Exhibit 8.9](#)).

Jennifer Edmond, Assistant Chief, Human Resources Division, provided a bargaining unit contract update, including highlights on the bargaining units and tentative agreements. Ms. Edmond also provided a presentation on BOE employee's participation in educational enrichment, training and upward mobility programs pursuant to the Memorandums of Understanding.

LEGAL APPEALS MATTERS, ADJUDICATORY

Sonja M. Craighton, 558975 (KH) (Continued)

Action: The Board deferred the matter to a later date.

Akop Jack Chichyan, Vicken Djeredjian, and Mnatsakan Mike Grigoryan, 388129 (STF) (Continued)

Action: The Board deferred the matter to a later date.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:44 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:18 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 13, 2013

Tonja M. Jarrell, 571357

Final Action: Mr. Runner moved to reverse the action of the Franchise Tax Board. The motion failed for lack of a second.

Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Tuesday, August 13, 2013

Prudent Staffing Services, 602283

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action with concession by the Franchise Tax Board.

Michael O. Gualco and Rex-Ann S. Gualco, 640336

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Ivon Pitti, 688101

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 13, 2013**

JI Medical, Inc., 562873 (AS)

1-1-01 to 12-31-03, \$13,242.33 Tax, \$2,327.98 Amnesty Interest Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Monica Silva, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether a sale of fixed assets of \$160,494.00 is subject to tax.
Whether relief of the amnesty interest penalty is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Steel requested a report to explain the four years between transfers of the file from one auditor to another.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD AUGUST 13, 2013

Orange Tree Fresh Fruit & Nuts, 527196 (STF)

8-28-06 to 12-31-08, \$90,730.80 Tax

Orange Tree Fresh Fruit & Nuts, 527198 (STF)

4-20-07 to 12-31-08, \$69,459.18 Tax

Orange Tree Fresh Fruit & Nuts, 527202 (STF)

4-25-06 to 12-31-08, \$118,690.87 Tax

For Petitioners: Waived Appearance

For Property and Special Taxes Department: Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable for the underground storage tank maintenance fees.

Tuesday, August 13, 2013

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 5:20 p.m.

The foregoing minutes are adopted by the Board on October 29, 2013.

Note: The following matters were removed from the calendar prior to the meeting: *Amador Patino and Gerardo Javier Guzman, 532069, 549106 (CH); La Primavera Products Svcs., Inc., 550549 (CH); Penryn Lumber Company, 554162 (KH); and, Legislative Committee.*